SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 131

J. W. WHITEHOUSE, G. ORNDORFF, J. H. SYLVESTER, CLAUDE R. BARNES, R. SARCHET AND THE ORDER OF RAILROAD TELEGRAPHERS,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, WILLIAM H. CASTLE, R. M. BUTLER, C. P. DUGAN, E. T. HORSLEY AND J. E. KEMP,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTION OF RESPONDENT ILLINOIS CENTRAL RAILROAD COMPANY TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE OF THE FOLLOWING ORGANIZATIONS:

American Train Dispatchers' Association; Railway Employes' Department, A. F. of L.; International Association of Machinists; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers; Brotherhood Railway Carmen of America; International Brotherhood of Firemen & Oilers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes; Brotherhood of Maintenance of Way Employes; Hotel & Restaurant Employees and Bartenders International Union; Railroad Yardmasters of America; Brotherhood of Sleeping Car Porters; and Brotherhood of Railroad Signalmen of America.

JOHN W. FOSTER,
HERBERT J. DEANY,
CHARLES J. HOPKINS, JR.,
135 East Eleventh Place,
Chicago 5, Illinois,
Attorneys for Respondents.

J. H. WRIGHT,
Of Counsel.

Dated at Chicago, Illinois, this 27th day of January, 1955.

THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

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J. W. WHITEHOUSE, G. ORNDORFF, J. H. SYLVESTER, CLAUDE R. BARNES, R. SARCHET AND THE ORDER OF RAILROAD TELEGRAPHERS,

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTION TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

Now comes Illinois Central Railroad Company, one of the respondents in the above-entitled cause, and files this its objection to the motion of American Train Dispatchers' Association, *et al.*, for leave to file a brief as *amici curiae* and as reasons therefor states as follows:

I. Rule 42, Section 3, of this Court provides in part that a motion for leave to file a brief as *amici curiae* shall "* * * set forth facts or questions of law that have not been, or reasons for believing that they will not adequately

be, presented by the parties, and their relevancy to the disposition of the case; * * *." In the motion of American Train Dispatchers' Association, *et al.*, it is stated (p. 4), "* * * we are confident that respondents' contentions here will be capably opposed by counsel for the petitioners, * * *." It thus appears that movants do not comply with Rule 42, Section 3. Although movants allege that other issues will necessarily be raised by the parties, they fail to state what those issues are and in the preceding part of their motion indicate that the issues are the same as those raised by the petitioners.

II. Movants assert (p. 4) that they "may fairly be said to represent railroad labor as a whole". This is not a fact. Not a single operating union has joined in the motion and brief of the *amici*. The following members of the Railway Labor Executives' Association failed to join in the aforesaid motion:

Brotherhood of Locomotive Firemen and Enginemen;
International Longshoremen's Association;
National Marine Engineers' Beneficial Association;
National Organization Masters, Mates & Pilots of America;
Order of Railway Conductors; and
Switchmen's Union of North America.

Likewise, the following railroad labor organizations did not join therein:

Amalgamated Association Street, Electric Railway and Motor Coach Employees of America, AFL;
American Brotherhood of Railway Police;
American Federation of Technical Engineers;
American Railway Supervisors Association;
Brotherhood of Locomotive Engineers;
Brotherhood of Railroad Shop Crafts of America;
Brotherhood of Railroad Trainmen;
Great Lakes Licensed Officers' Organization;
Inland Boatmen's Union of the Pacific;

International Association of Railway Employees;
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers;
International Longshoremen's Association;
International Union of Steam and Operating Engineers;
National Maritime Union;
Railroad Industrial Union;
Railroad Yardmasters of North America;
Railway Patrolmen's International Union, AFL;
Seafarers' International Union of North America;
United Mine Workers, District 50;
United Transport Service Employees;
United Railroad Workers of America, CIO; and
Utility Workers Organizing Committee.

In fact the Brotherhood of Railroad Trainmen, which is one of the oldest and strongest of all railroad unions, agrees with the position of respondents herein, for it successfully filed a similar mandamus action against the First Division of the Board in *Brotherhood of Railroad Trainmen* v. *Swan*, C. A. 7 (1954), 214 F. 2d 56.

III. Although the points urged by movants are similar in nature to those urged by petitioners, most of the issues posed are not presented in the case at bar, the only issue here being whether Section 3 First (j) of the Railway Labor Act requires the National Railroad Adjustment Board to give notice, and an opportunity to be heard, to the employees involved in the dispute and to the labor union that represents his craft or class.

IV. Movants have mis-stated the position of respondent Illinois Central Railroad Company. It is not our position "that the Adjustment Board may in effect rewrite the agreement of the claimant craft, and the other craft or crafts thus brought in as third parties, so as to eliminate any conflict or overlapping in the agreements" (p. 3). It is the position of respondent, Illinois Central,

that the Board is bound by the plain, unambiguous language of the statute and of this Court in the cases of *Order of Conductors* v. *Pitney*, 326 U. S. 561, and *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239.

WHEREFORE, respondent respectfully prays that the motion of American Train Dispatchers' Association, *et al.*, to intervene as *amici curiae* be denied.

Respectfully submitted.

JOHN W. FOSTER,
HERBERT J. DEANY,
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135 East Eleventh Place,
Chicago 5, Illinois,
Attorneys for Respondents.

J. H. WRIGHT,
Of Counsel.

CERTIFICATE OF SERVICE.

I, JOHN W. FOSTER, one of the attorneys for the respondent Illinois Central Railroad Company, do hereby certify that on the 27th day of January, 1955, I served the attached objection to the motion for leave to file brief as *amici curiae* upon all parties of record herein by depositing copies thereof in the United States Mail, via Airmail, postage prepaid, addressed to Milton Kramer and Lester P. Schoene, Schoene & Kramer, 1625 K Street, N. W., Washington 6, D. C., Attorneys for Petitioners; Clarence M. Mulholland, Edward J. Hickey, Jr. and Richard R. Lyman, Mulholland, Robie & Hickey, 714 National Bank Building, Toledo 4, Ohio, Attorneys for *Amici Curiae;* and by depositing a copy thereof in the United States Mail, regular mail, postage prepaid, to: Walter J. Cummings, Jr., Sidley, Austin, Burgess & Smith, 11 South LaSalle Street, Chicago 4, Illinois, Attorneys for Respondents William H. Castle, R. M. Butler, C. P. Dugan, E. T. Horsley and J. E. Kemp.

JOHN W. FOSTER.